

This letter discusses the tax liabilities for sales of prepaid calling card arrangements and other services. See 86 Ill. Adm. Code 495. (This is a GIL.)

June 10, 2008

Dear Xxxxx:

This letter is in response to your letter dated May 3, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We represent a client that is considering introducing a new service described below. The client has engaged us to determine the taxability of their proposed service in your state. By means of this letter we are requesting a Private Letter Ruling regarding the following service.

### **OVERVIEW**

Our client proposes to offer their customers various 'audio' and 'downloaded' content services via cellular telephones in addition to providing traditional long distance telecommunication services. Customers will dial into a 'voice portal' and will be able to select from a menu of options the service they want to hear or download. For 'audio' services, the customer will be charged a 'per minute' fee. For 'downloaded' products or services, the customer may be billed an additional fee. The types of content will include:

- ◆ News
- ◆ Songs
- ◆ Ring Tones
- ◆ Sports Live Video
- ◆ Sports Scores
- ◆ Astrology
- ◆ Stock Information

- ◆ Cuisine (Recipes)
- ◆ Discover India (Travelogue)
- ◆ Kid's Short Stories
- ◆ Exam Results
- ◆ Reality Shows
- ◆ Humorous Content

## **PROCESS**

- (1) After dialing a toll free number the customer will enter a customer authentication code (PIN).
- (2) After the authentication, there will be an announcement made to dial a destination number (for telephone calls) or '01234' for accessing the content services.
- (3) When a customer dials '01234' there will be an announcement that 'this call will be charged at XXX rate' and the call will be handed off to a voice portal where the customer will choose the content services desired.
- (4) Customers will be able to listen to and download the content at the same time.

## **CHARGING FOR THE SERVICES**

Customers will be able to acquire the above services on either a 'prepaid' or 'post paid' basis. If the services are provided on a 'prepaid' basis, the prepaid balance will be decremented with a 'per minute' usage charge for the audio and telecommunication services, and with an additional fixed charge for downloaded content. Post paid services will be charged the same way but will be billed to the customers after usage has occurred.

In the case of the prepaid option, since the services provided are not 'exclusively' for making telephone calls, we do not believe these sales will be treated as 'prepaid calling services', taxable at the point of sale (POS) but rather based upon usage, if taxable at all.

## **SPECIFIC QUESTIONS**

- (1) How should each of the 'content services' be taxed in your jurisdiction if merely listened to?
- (2) How should each of the 'content services' be taxed in your jurisdiction if they are downloaded?
- (3) Is there a difference in treatment if sold 'prepaid' as opposed to 'post paid'?
- (4) How should the telephone calls be treated for tax purposes?

Thank you advance for your response.

## **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Your letter provides insufficient descriptions and information regarding the

provision and billing of each of the product and services identified by you to enable the Department to determine with any certainty the applicability of Federal and State law. Therefore, it is the Department's position that we must decline to issue a Private Letter Ruling. However, we hope the following will be helpful in addressing your question.

Effective January 1, 2001, prepaid telephone calling card arrangements became taxable as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act and Use Tax Act. See 35 ILCS 120/2. "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. "Recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code.

Your letter states that, in the case of the prepaid option, the prepaid balance on the card "will be decremented with a 'per minute' usage charge for audio and telecommunications services, and with an additional fixed charge for downloaded content." If a prepaid option is not used exclusively to purchase telephone or telecommunications services it is not a "prepaid telephone calling arrangement" as defined by law and is not subject to Retailers' Occupation Tax at the time of purchase. However, to the extent the prepaid option is used to purchase telecommunications services, Telecommunications Excise Tax will be due on the gross charges received from the sale at retail of telecommunications services at the time such services are purchased.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. See 35 ILCS 630/2(c).

"Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services and also transmission services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not disaggregated, the entire charge is taxable as a sale of telecommunications.

As noted above, your letter provides insufficient descriptions and information regarding the provision and billing of each of the product and services identified by you identify to enable the Department to determine with any certainty the tax liability on the sale and purchase of those services. However, generally, charges for chat line services, other than the charges for transmission,

are not subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495(i). Section 495.100(i) states that, "[g]ross charges shall include the transmission charges for premium services. Time/weather, gab line/party line and other public announcement services of information and entertainment, and charges for the message content or information of such services, are not included in gross charges."

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters  
Associate Counsel

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